

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In the matter of)

LOCAL RULES AMENDMENTS)

General Order No. 621

Good cause appearing, and following a public comment period, IT IS ORDERED that the following Local Rules are amended to read, or as otherwise indicated, as follows:

Civil Rule 5.1 Form; Paper; Legibility; Nature of Documents to be Filed

- a. **Legibility.** Each document filed, including exhibits where practicable, must be in English, plainly written, or typed in double space on one side of the document, line numbered in the left margin, and letter size. Documents filed in paper format must be flat and unfolded, without backing sheet, double spaced on one side of the paper or printed or prepared by means of a duplicating process on opaque, unglazed white paper. Quotations in excess of three lines must be indented and single spaced. Typewritten text must be no less than 10-point type in the Courier font or equivalent, spaced 10 characters per horizontal inch. Printed text, produced on a word processor or other computer, may be proportionally spaced, provided the type is no smaller than ~~twelve~~fourteen-point standard font (e.g. Times New Roman). The text of footnotes and quotations must also conform to these font requirements.

Civil Rule 83.7 Free Press - Fair Trial Provisions

- a. **Official Newspapers.** The "San Diego Commerce" of San Diego (published by the "Daily Journal Corporation"), being a newspaper of general circulation within the County of San Diego and within above district, and the ~~"Post-Press Newspaper"~~ "Imperial Valley Press" of El Centro, California, being a newspaper of general circulation in the County of Imperial and within the above district, are designated as the official newspapers for publication of all notices required to be published in ~~bankruptcy matters and all other notices required to be published~~ by law or order of this court.

The court may, in any case for the convenience of the parties in interest or in the interest of justice, designate any other newspaper for publication of notices as the court may determine.

Civil Rule 83.8 Nonappropriated Funds / Plan for Administration of The Court Library Fund and Pro Bono Fund

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a. Guidelines for Use

1. **Library Fund.** Consistent with Judicial Conference Guidelines, the fund must be used for purposes approved by the district court judges for expenses that inure to the benefit of members of the bench and the bar of the court, including, but not limited to the following:

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- k. Expenses for the development of historical and educational materials describing the court for use by the bar, including, but not limited to, the Annual Reports;

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- n. Fees for services rendered by outside auditors in auditing the fund, in accordance with Section 4 below;

- o. Costs of the annual Southern District of California Conference, and costs associated with the court's participation in the Ninth Circuit Judicial Conference.

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- c. **Management of Fund.** The district court judges will act as the advisory committee supervising the fund. Duties specified below as those of the clerk and chief judge apply also to the clerk's designee or acting chief.

1. **Library Fund.** The judges delegate to the clerk authority to authorize expenditures totaling \$500 per month. If any expenditures exceed that amount, the clerk will refer the request to the chief judge who ~~will inform the district court judges will have the authority to approve individual expenditures not exceeding \$2,500.~~ A Library Fund Committee, consisting of the current chief judge, the immediate former chief judge, and the next chief judge, will have the authority to approve individual expenditures not exceeding \$5,000. Approval by ~~the~~ a majority of active district court judges is needed to authorize individual expenditures in excess of ~~\$500 per month \$5,000.~~ Furthermore, fFor any check in excess of \$500, the signature of the chief judge as well as the clerk is required.

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3. **Report.** The clerk of court will distribute the quarterly report required in Section b.1.c to the chief judge who will distribute it to the district court judges for review. Further, any other reports, such as those required in Section 2.~~b~~b.2 or Section 2.~~d~~d will be distributed by the chief judge to all district court judges for review.

Patent Local Rule 2. General Provisions

2.1 Governing Procedure.

- a. **Early Neutral Evaluation (“ENE”) Conference.** Within sixty (60) days of a defendant making its first appearance in the case, counsel and the parties will appear before the assigned magistrate judge for an ENE conference pursuant to Civ.L.R. 16.1.c.1. No later than twenty-one (21) days before the ENE, the parties will meet and confer pursuant to Fed.R.Civ.P. 26(f).

If no settlement is reached at the ENE Conference, the magistrate judge will proceed with the Initial Case Management Conference. At the end of the conference, the magistrate judge must prepare a case management order which will include:

1. ~~—— A discovery schedule; and~~
1. A discovery schedule, including an initial date for the substantial completion of document discovery including electronically stored information (“ESI”), and a later date for the completion of all fact discovery;
2. A date for the Claim Construction Hearing within nine (9) months of the date of a defendant’s first appearance;
3. A trial date within eighteen (18) months of the date the complaint was filed, if practicable, for “standard” cases (defined as typically having one or two defendants and one or two patents); and, within twenty-four (24) months for complex cases, if practicable;
4. A dispositive motion filing cutoff date to include any motions addressing any Daubert issues;
5. A date for the Mandatory Settlement Conference; and

6. All other pretrial dates, as required in Civ.L.R. 16.1.d.2, as appropriate.

b. **Initial Case Management Conference.** When the parties confer with each other pursuant to Fed.R.Civ.P. 26(f), in addition to the matters covered by Fed.-R.Civ.P. 26, the parties must discuss and address in the ~~Case Management Statement~~Joint Discovery Plan filed pursuant to Fed.R.Civ.P. 26(f), the following topics:

1. Proposed modification of the deadlines provided for in these Patent Local Rules, and the effect of any such modification on the date and time of the Claim Construction Hearing, if any;
- ~~2. Whether the court will hear live testimony at the Claim Construction Hearing;~~
2. The need for and specific limits on discovery relating to claim construction, including depositions of percipient and expert witnesses; and
3. The need, if any, to phase damage discovery.
- ~~4. The order of presentation at the Claim Construction Hearing.~~

c. **Settlement Conferences.**

1. The judge conducting the settlement conference may require the parties or representatives of a party other than counsel, who have authority to negotiate and enter into a binding settlement, be present at the settlement conference.
2. When ordered to appear, each party, claims adjusters for insured defendants, in addition to any other representatives with "full authority" to enter into a binding settlement, as well as the principal attorney(s) responsible for the litigation, must be present and legally and factually prepared to discuss and resolve the case at the Settlement Conference. Any variation from this Rule or special arrangements desired in cases must be proposed no later than twenty-one (21) days in advance of the settlement conference to the settlement judge.
3. "Full authority" means, that the individuals at the settlement conference be authorized to fully negotiate settlement terms and to agree at that time to any settlement terms acceptable to the parties.

and to bind the party, without the need to call others not present at the conference for authority or approval.

4. No later than twenty-one (21) days before the settlement conference, each party will designate in writing to all other parties, the person(s) and their title(s) or position(s) with the party who will attend and have final settlement authority at the conference. Any objection to a party's designation must be made in writing no later than fourteen (14) days before the settlement conference. Counsel must first meet and confer and attempt to resolve the dispute before raising the dispute with the court.
5. Unless otherwise ordered by the court, briefs should not exceed ten (10) pages (plus exhibits) and should be submitted to the settlement judge fourteen (14) days prior to the settlement conference.

2.2 Confidentiality.

If any document or information produced under these Patent Local Rules is deemed confidential by the producing party and if the court has not yet entered a protective order, until a protective order is issued by the court, the document will be marked "Confidential" or with some other confidential designation (such as "Confidential – Outside Attorneys Eyes Only") by the disclosing party and disclosure of the confidential document or information will be limited to each party's outside attorney(s) of record and the employees of such outside attorney(s). An approved model form of protective order is attached as Appendix A, available on the Court's website (www.casd.uscourts.gov) and may be amended by the Court over time as deemed appropriate. [A copy of the model protective order is attached as part of this General Order.]

If a party is not represented by an outside attorney, disclosure of the confidential document or information will be limited to a designated "in house" attorney, whose identity and job functions will be disclosed to the producing party five (5) court days prior to any such disclosure, in order to permit any motion for protective order or other relief regarding such disclosure. The person(s) to whom disclosure of a confidential document or information is made under this Patent Local Rule will keep it confidential and use it only for purposes of litigating the case.

A document may not be filed under seal unless authorized by an order entered by the judge before whom the hearing or proceeding related to the proposed sealed document will take place.

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2.5 Relationship to Federal Rules of Civil Procedure.

Except as provided in this paragraph or as otherwise ordered, it will not be a legitimate ground for objecting to an opposing party's discovery request (e.g., interrogatory, document request, request for admission, deposition question), or declining to provide information otherwise required to be disclosed pursuant to Fed.R.Civ.P. 26(a)(1), that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, these Patent Local Rules. A party may object, however, to responding to the following categories of discovery requests on the ground that they are premature in light of the timetable provided in the Patent Local Rules:

- a. Requests seeking to elicit a party's claim construction position;
- b. Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, or other instrumentality;
- c. Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and
- d. Requests seeking to elicit from an accused infringer the identification of any opinions opinion of counsel, and related documents, that it upon which a party intends to rely upon as a for any patent-related claim or defense to an allegation of willful infringement.

Where a party properly objects to a discovery request as set forth above, that party must provide the requested information on the date on which it is required to provide the requested information to an opposing party under these Patent Local Rules, unless another legitimate ground for objection exists.

2.6 Model Order For Electronically Stored Information ("ESI").

The Court has approved a Model Order For ESI that applies to all Patent Cases in this District as defined in Patent L.R. 1.3 unless otherwise ordered by a judge assigned to the case. The Model Order is available on the Court's website, and may be amended by the Court over time as deemed appropriate. [A copy of the Model Order For ESI is attached as part of this General Order.]

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Patent Local Rule 3. Patent Disclosures

3.1 Disclosure of Asserted Claims and Preliminary Infringement Contentions.

Not later than fourteen (14) days after the Initial Case Management Conference, a party claiming patent infringement must serve on all parties a "Disclosure of Asserted Claims and Preliminary Infringement Contentions." Separately for each opposing party, the "Disclosure of Asserted Claims and Preliminary Infringement Contentions" must contain the following information:

- a. Each claim of each patent in suit that is allegedly infringed by each opposing party;
- b. Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware. This identification must be as specific as possible. Each product, device and apparatus must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;
- c. A chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;
- d. For each claim which is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. Insofar as alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described.
- d.e. Whether each element of each asserted claim is claimed to be literally present and/or present under the doctrine of equivalents in the Accused Instrumentality;
- e.f. For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled; and
- f.g. If a party claiming patent infringement asserts or wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed

invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and

- h. If a party claiming patent infringement alleges willful infringement, the basis for such allegation.

3.2 Document Production Accompanying Disclosure.

With the "Disclosure of Asserted Claims and ~~Preliminary~~ Infringement Contentions," the party claiming patent infringement must produce to each opposing party or make available for inspection and copying, the following documents in the possession, custody or control of that party:

- a. Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, the claimed invention prior to the date of application for the patent in suit. A party's production of a document as required within these rules does not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;
- b. All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or the priority date identified pursuant to Patent L.R. 3.1.e, whichever is earlier; and
- c. A copy of the file history for each patent in suit and each application to which a claim for priority is made under Patent L.R. 3.1.e; and
- d. Documents sufficient to evidence ownership of the patent rights by the party asserting patent infringement; and
- e. If a party identifies instrumentalities pursuant to Patent L.R. 3.1.g, documents sufficient to show the operation of any aspects or elements of such instrumentalities the patent claimant relies upon as embodying any asserted claims.

The producing party must separately identify by production number which documents correspond to each category. If the documents identified above are not in the possession, custody or control of the party charged with production, that party must use its best efforts to obtain all responsive documents and make a timely disclosure.

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3.3 Preliminary Invalidity Contentions.

Not later than sixty (60) days after service upon it of the "Disclosure of Asserted Claims and Preliminary Infringement Contentions," each party opposing a claim of patent infringement must serve on all parties its "Preliminary Invalidity Contentions," which must contain the following information:

- a. The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. This includes information about any alleged knowledge or use of the invention in this country prior to the date of invention of the patent. Each prior art patent must be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) must be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity that made the use or that made and received the offer, or the person or entity that made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) must be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) must be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);
- b. Whether each item of prior art anticipates each asserted claim or renders it obvious. If a combination obviousness is alleged, an explanation of items of why the prior art makes or renders the asserted claim obvious, each such combination must be identified, including an identification of any combinations of prior art showing obviousness;
- c. A chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function;
- d. Any grounds of invalidity based on indefiniteness under 35 U.S.C. § 112(2) of any of the asserted claims; and
- e. Any grounds of invalidity based on lack of written description, lack of enabling disclosure, or failure to describe the best mode under 35 U.S.C. § 112(1).

3.4 Document Production Accompanying Preliminary Invalidity Contentions.

With the “Preliminary Invalidity Contentions,” the party opposing a claim of patent infringement must produce or make available for inspection and copying:

- a. Source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of any Accused Instrumentality identified by the patent claimant in its Patent L.R. 3.1.c chart; and
- b. A copy of each item of prior art identified pursuant to Patent L.R. 3.3.a which does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon must be produced.

3.5 Disclosure Requirements in Patent Cases for Declaratory Relief.

- a. **Invalidity Contentions if No Claim of Infringement.** In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, Patent Local Rules 3.1 and 3.2 will not apply unless and until a claim for patent infringement is made by a party. If the defendant does not assert a claim for patent infringement in answer to the complaint, no later than fourteen (14) days after the Initial Case Management Conference the party seeking a declaratory judgment must serve upon each opposing party Preliminary Invalidity Contentions that conform to Patent L.R. 3.3 and produce or make available for inspection and copying the documents described in Patent L.R. 3.4.
- b. **Inapplicability of Rule.** This Patent L.R. 3.5 does not apply to cases in which a request for declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, is filed in response to a complaint for infringement of the same patent.

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3.6 Amended and Final Contentions.

Each party's "~~Preliminary Infringement Contentions~~" and "~~Preliminary Invalidity Contentions~~" will be deemed to be that party's final contentions, except as set forth below:

- a. ~~If a party claiming patent infringement believes in good faith that (1) the court's Claim Construction Ruling so requires, or (2) the documents produced pursuant to Patent L.R. 3.4 so require, then not later than thirty (30) days after service by the court of its Claim Construction Ruling, that party may serve "Final Infringement Contentions" without leave of court that amend its "Preliminary Infringement Contentions" with respect to the information required by Patent Local Rules 3.1.c and d.~~
- a. As a matter of right, a party asserting infringement may serve Amended Infringement Contentions no later than the filing of the parties' Joint Claim Construction Chart. Thereafter, absent undue prejudice to the opposing party, a party asserting infringement may only amend its infringement contentions:
 1. if, not later than thirty (30) days after service of the court's Claim Construction Ruling, the party asserting infringement believes in good faith that amendment is necessitated by a claim construction that differs from that proposed by such party; or
 2. upon a timely motion showing good cause.
- b. ~~Not later than fifty (50) days after service by the court of its Claim Construction Ruling, each party opposing a claim of patent infringement may serve "Final Invalidity Contentions" without leave of court that amend its "Preliminary Invalidity Contentions" with respect to the information required by Patent L.R. 3.3 if:~~
 1. ~~a party claiming patent infringement has served "Final Infringement Contentions" pursuant to Patent L.R. 3.6.a, or~~
 2. ~~the party opposing a claim of patent infringement believes in good faith that the court's Claim Construction Ruling so requires.~~
- b. As a matter of right, a party opposing a claim of patent infringement may serve "Amended Invalidity Contentions" no later than the completion of claim construction discovery. Thereafter, absent undue prejudice to the opposing party, a party opposing infringement may only amend its invalidity contentions:

1. if a party claiming patent infringement has served "Amended Infringement Contentions," and the party opposing a claim of patent infringement believes in good faith that the Amended Infringement Contentions so require;
2. if, not later than fifty (50) days after service of the court's Claim Construction Ruling

3.7 Amendment to Contentions:

~~Amendment or modification of the Preliminary or Final Infringement Contentions or the Preliminary or Final Invalidity Contentions, other than as expressly permitted, the party opposing infringement believes in Patent L.R. 3.6, may be made only by order of the court, which will be entered only upon a showing of good cause, good faith that amendment is necessitated by a claim construction that differs from that proposed by such party; or~~

3. upon a timely motion showing good cause.

This rule does not relieve any party from its obligations under Fed.R.Civ.P. 26 to timely supplement disclosures and discovery responses.

~~3.8 Willfulness:~~

3.7 Advice of Counsel.

Not later than thirty (30) days after filing of the Claim Construction Order, each party ~~opposing a claim~~ relying upon advice of patent infringement that will rely on an opinion ~~counsel as part of a patent-related claim or defense for any reason~~ must:

- a. Produce or make available for inspection and copying the opinion(s) and any other documentation relating to the opinion(s) as to which that party agrees the attorney-client or work product protection has been waived; ~~and~~
- b. Provide a written summary of any oral advice and produce or make available for inspection and copying that summary and documents related thereto for which the attorney-client and work product protection have been waived; and
- b.c. Serve a privilege log identifying any other documents, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the opinion(s) which the party is withholding on the grounds of attorney-client privilege or work product protection.

A party ~~opposing a claim of patent infringement~~ who does not comply with the requirements of Patent L.R. 3.87 will not be permitted to rely on ~~an opinion~~ advice of counsel as part of a defense to willful infringement for any purpose, absent a

stipulation of all parties or by order of the court, which will be entered only upon showing of good cause.

Patent Local Rule 4. Claim Construction Proceedings

4.1 Exchange of Preliminary Claim Construction and Extrinsic Evidence.

- a. Not later than fourteen (14) days after the service of the “Preliminary Invalidity Contentions” pursuant to Patent L.R. 3.3, the parties will simultaneously exchange a preliminary proposed construction of each claim term, phrase, or clause which the parties have identified for claim construction purposes. Each such “Preliminary Claim Constructions” will also, for each element which any party contends is governed by 35 U.S.C. § 112(6), identify the structure(s), act(s), or material(s) described in the specification corresponding to that element.
- b. Simultaneously with exchange of the “Preliminary Claim Constructions,” the parties must also provide a preliminary identification of extrinsic evidence, including without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses they contend support their respective claim constructions. The parties must identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, percipient or expert, the parties must also provide a brief description of the substance of that witness’s proposed testimony.
- c. Not later than fourteen (14) days after the service of the “Preliminary Claim Constructions” pursuant to Patent L.R. 4.1.a, the parties will simultaneously exchange “Responsive Claim Constructions” identifying whether the responding party agrees with the other party’s proposed construction, or identifying an alternate construction in the responding party’s preliminary construction, or setting forth the responding party’s alternate construction.
- d. Simultaneous with exchange of the “Responsive Claim Constructions” pursuant to Patent L.R. 4.1.c, the parties must also provide a preliminary identification of extrinsic evidence, including without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses they contend support any responsive claim constructions. The parties must identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, percipient or expert, the parties must also provide a brief description of the substance of that witness’s proposed testimony.

- e. The parties must thereafter meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction Chart, Worksheet and Hearing Statement.

4.2 Joint Claim Construction Chart, Worksheet and Hearing Statement.

Not later than fourteen (14) days after service of the "Responsive Claim Constructions" pursuant to Patent L.R. 4.1.c, the parties must complete and file a Joint Claim Construction Chart, Joint Claim Construction Worksheet and Joint Hearing Statement.

- a. The Joint Hearing Statement must include an identification of the terms whose construction will be most significant to the resolution of the case up to a maximum of ten (10) terms. The parties must also identify any term among the ten (10) whose construction will be case or claim dispositive. If the parties cannot agree on the ten (10) most significant terms, the parties must identify the ones which they do agree are most significant and then they may evenly divide the remainder with each party identifying what it believes are the remaining most significant terms. However, the total terms identified by all parties as most significant cannot exceed ten (10). For example, in a case involving two (2) parties, if the parties agree upon the identification of five (5) terms as most significant, each may only identify two (2) additional terms as most significant; if the parties agree upon eight (8) such terms, each party may only identify only one (1) additional term as most significant.
- a.b. The Joint Claim Construction Chart must have a column listing complete language of disputed claims with the disputed terms in bold type and separate columns for each party's proposed construction of each disputed term. Each party's proposed construction of each disputed claim term, phrase, or clause, must identify all references from the specification or prosecution history that support that construction, and identify any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction of the claim or to oppose any party's proposed construction of the claim, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses. For every claim with a disputed term, each party shall identify with specificity the impact of the proposed constructions on the merits of the case.
- b.c. The parties' Joint Claim Construction Worksheet must be in the format set forth in Appendix BA [A copy of Appendix A is attached to this General Order.] and include any proposed constructions to which the parties agree, as well as those in dispute. The parties must jointly submit the Joint Claim Construction Worksheet on computer disk in both Word and WordPerfect format or in such other format as the court may direct.

e.d. The Joint Hearing Statement must include:

1. The anticipated length of time necessary for the Claim Construction Hearing; and
2. Whether any party proposes to call one or more witnesses, including experts, at the Claim Construction Hearing, the identity of each such witness, and for each expert, a summary of each opinion to be offered in sufficient detail to permit a meaningful deposition of that expert; and
3. The order of presentation at the Claim Construction Hearing.

d.e. At the court's discretion, within seven (7) days of the submission of the Joint Claim Construction Chart, Joint Claim Construction Worksheet and Joint Hearing Statement, the court will hold a status conference with the parties, in person or by telephone, to discuss scheduling, witnesses and any other matters regarding the Claim Construction Hearing.

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4.4. Claim Construction Briefs.

- a. Not later than fourteen (14) days after close of claim construction discovery, the parties will simultaneously file and serve opening briefs and any evidence supporting their claim construction.
- b. Not later than fourteen (14) days after service of the opening briefs, the parties will simultaneously file and serve briefs responsive to the opposing party's opening brief and any evidence directly rebutting the supporting evidence contained in the opposing party's opening brief.
- c. Absent leave of Court, the provisions of Civ.L.R. 7.1.h for length of briefs for supporting and reply memoranda shall apply to the length of opening and responsive claim construction briefs.

4.5 Claim Construction Hearing.

Not later than twenty-eight (28) days after service of responsive briefs and subject to the convenience of the court's calendar, the court will conduct a Claim Construction Hearing, if the court believes a hearing is necessary for construction of the claims at issue. The court may also order in its discretion a tutorial hearing, to occur before, or on the date of, the Claim Construction Hearing.

Attached as Appendix EB [A copy of Appendix B is attached to this General Order.]

is a time line illustrating the exchange and filing deadlines set forth in these Patent Local Rules.

Criminal Rule 57.2.1 Related Cases

a. Definition of Related Action.

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4. A case is considered "pending" until one year after all named defendants have been sentenced. A case is also considered pending if it is one of the cases listed in paragraphs 5, 6, or 7 herein.
5. If a defendant is serving a term of probation or supervised release on a case in this district and the defendant is charged with a new offense in this district, the new case is deemed related to the case in which the defendant is on such term of supervision if the defendant is the sole defendant in the new case.
6. If a defendant is accused of an offense charged in this district and is on probation or supervised release in another district, and that district transfers jurisdiction over the supervision to this district, any revocation proceedings will be deemed related to the new case pending in this district.
7. If a defendant is charged with escape under 18 U.S.C. § 751 from a sentence imposed by a judge of this court, the escape charge will be deemed related to the case in which the sentence from which the defendant allegedly escaped was imposed.

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c. Assignment

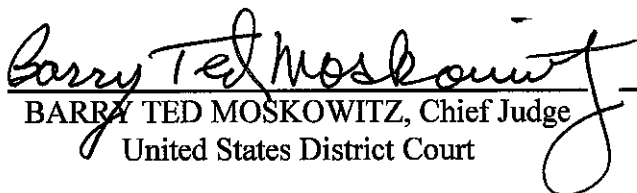
Related cases must be assigned in the following manner. The Clerk must assign the new case to the judge to whom the oldest, pending related case is assigned. If a judge who is assigned a case under this procedure determines that the cases in question are not related to one of the judge's pending cases, the judge may transfer the new case to the Clerk for reassignment. A senior judge may elect to decline the assignment of a new related case.

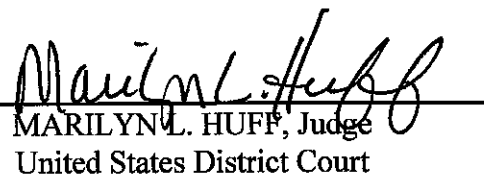
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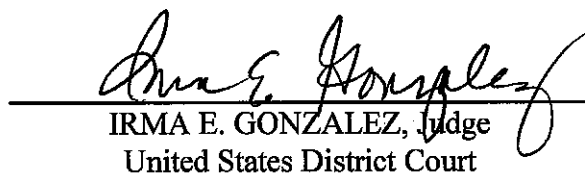
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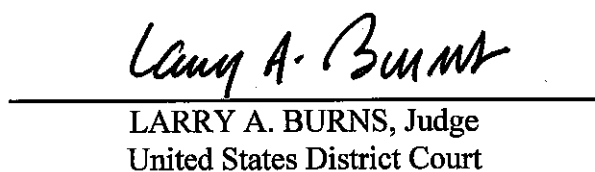
The period for public comment will be until January 18, 2013. Absent further order of this Court, the effective date of the Rules is February 1, 2013. Any comments should be submitted to the Clerk, U.S. District Court, at 333 W. Broadway, Suite 420, San Diego, California 92101. Please note on the envelope: In Re: Local Rule Amendments.

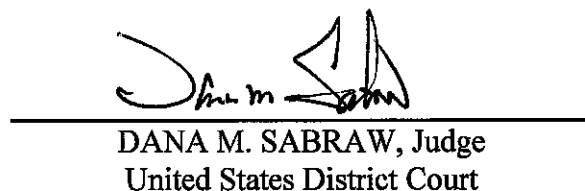
Dated: 12/3/12

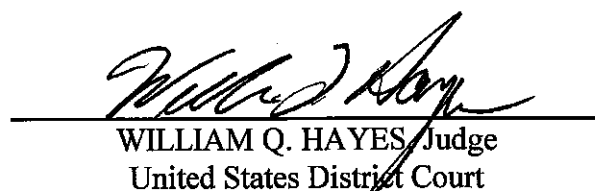

BARRY TED MOSKOWITZ, Chief Judge
United States District Court



MARILYN L. HUFF, Judge
United States District Court


IRMA E. GONZALEZ, Judge
United States District Court



LARRY A. BURNS, Judge
United States District Court


DANA M. SABRAW, Judge
United States District Court

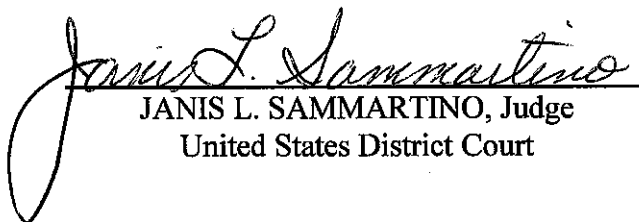

WILLIAM Q. HAYES, Judge
United States District Court




JOHN A. HOUSTON, Judge
United States District Court



ROGER T. BENITEZ, Judge
United States District Court




JANIS L. SAMMARTINO, Judge
United States District Court



MICHAEL M. ANELLO, Judge
United States District Court



ANTHONY J. BATTAGLIA, Judge
United States District Court



CATHY ANN BENCIVENGO, Judge
United States District Court



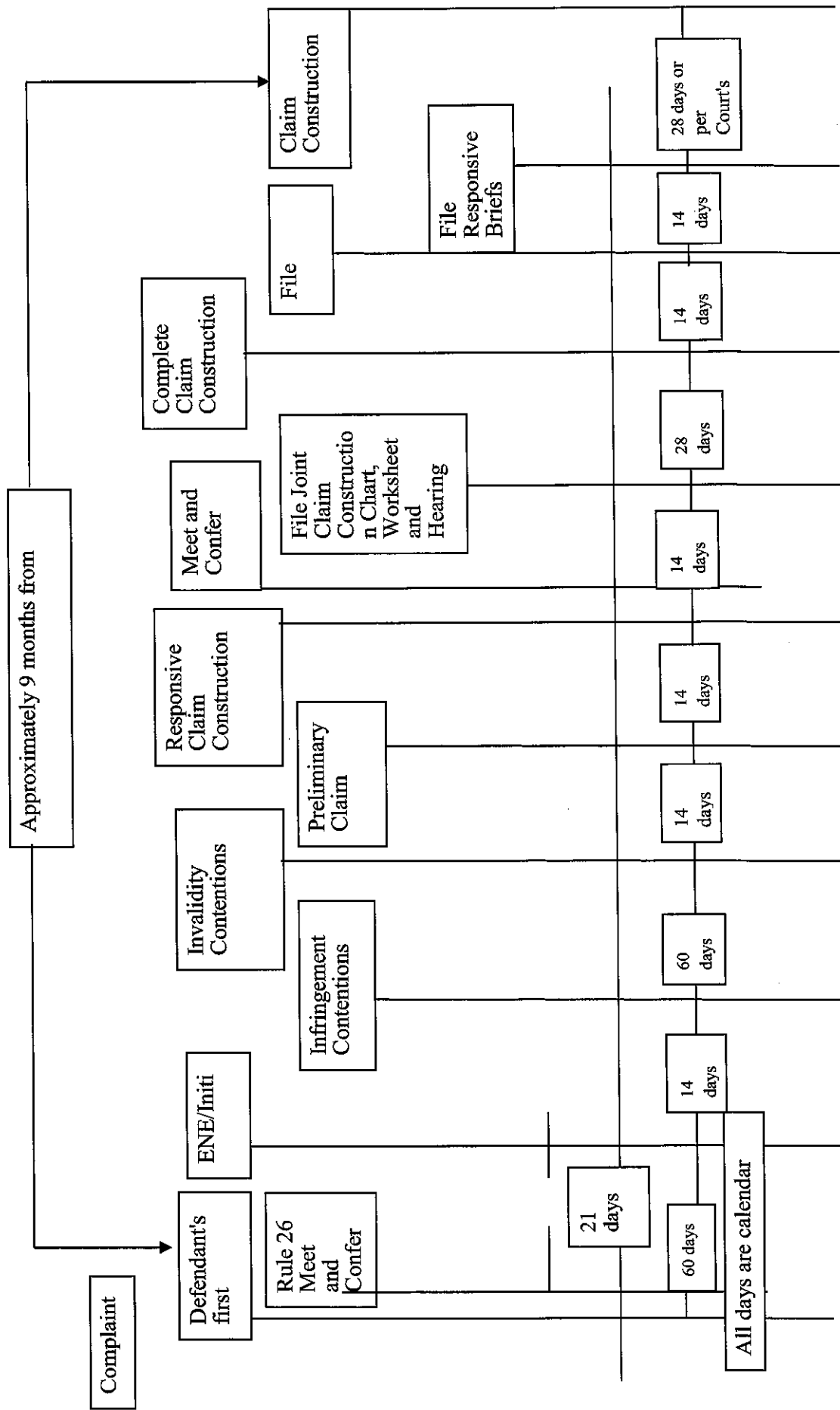
GONZALO P. CURIEL, Judge
United States District Court

APPENDIX A
APPROVED FORM OF
JOINT CLAIM CONSTRUCTION WORKSHEET

JOINT CLAIM CONSTRUCTION WORKSHEET

PATENT CLAIM	AGREED PROPOSED CONSTRUCTION	PLAINTIFF'S PROPOSED CONSTRUCTION	DEFENDANT'S PROPOSED CONSTRUCTION	COURT'S CONSTRUCTION
1. Claim language as it appears in the patent with terms and phrases to be construed in bold.	Proposed construction if the parties agree.	Plaintiff's proposed construction if parties disagree.	Defendant's proposed construction if parties disagree.	Blank column for Court to enter its construction.
2. Claim language as it appears in the patent with terms and phrases to be construed in bold.	Proposed construction if the parties agree.	Plaintiff's proposed construction if parties disagree	Defendant's proposed construction if parties disagree.	Blank column for Court to enter its construction.
3. Claim language as it appears in the patent with terms and phrases to be construed in bold.	Proposed construction if the parties agree.	Plaintiff's proposed construction if parties disagree	Defendant's proposed construction if parties disagree.	Blank column for Court to enter its construction.

APPENDIX B
TIME LINE OF EXCHANGE AND FILING DATES
Timeline for Patent Cases in the United States District Court for the Southern District of California



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Plaintiff,

Plaintiff,

v.

Defendant,

Defendant.

Case No. 00cv0000

PROTECTIVE ORDER

The Court recognizes that at least some of the documents, electronic data, and information being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order ("Order") in this action.

The Materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing, or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(7). The purpose of this Order is to protect the confidentiality of such Materials as much as practically possible during the litigation. THEREFORE:

DEFINITIONS

1. The term "Confidential Information" will mean and include information disclosed or to be disclosed during this litigation including, without limitation, information contained in any

1 Materials and information provided in documents, portions of documents, answers to
2 interrogatories, responses to requests for admissions, trial testimony, deposition testimony, and
3 transcripts of trial testimony and depositions, including data, summaries, compilations, copies,
4 abstracts, and any other format reproducing or capturing such information or otherwise derived
5 from such information that meets the designation requirements of "CONFIDENTIAL,"
6 "CONFIDENTIAL – OUTSIDE COUNSEL ONLY," or "CONFIDENTIAL – OUTSIDE
7 COUNSEL ONLY - SOURCE CODE" as set out in paragraphs 7 and 8, below. *[Note: In any*
8 *action where source code is not at issue, counsel may revise this Order to delete all references to*
9 *the handling and protection of source code.]*

10 2. The term "Materials" will include, but is not limited to: documents;
11 correspondence; e-mails; memoranda; bulletins; blueprints; specifications; customer lists or other
12 matter that identify customers or potential customers; price lists or schedules or other matter
13 identifying pricing; minutes; telegrams; letters; statements; cancelled checks; contracts; invoices;
14 drafts; books of account; worksheets; notes of conversations; desk diaries; appointment books;
15 expense accounts; recordings; photographs; motion pictures; compilations from which
16 information can be obtained and translated into reasonably usable form through detection devices;
17 sketches; drawings; notes (including laboratory notebooks and records); reports; instructions;
18 disclosures; other writings; models and prototypes; and other physical objects.

19 3. The term "Counsel" will mean outside Counsel of Record, as defined below, and
20 shall also include other attorneys, paralegals, secretaries, and other support staff employed by the
21 law firms identified below:

22 _____
23 _____
24 *[Option for designating specific in-house counsel and litigation staff to allow access to and*
25 *review of Confidential Information designated as "CONFIDENTIAL":* For purposes of this
26 Order, the term "Counsel" shall also include the following in-house attorneys and litigation
27 support staff for [Plaintiff], _____, and the following in-house
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1 attorneys and litigation support staff for [Defendant], _____, but no other
2 in-house personnel unless otherwise provided in this Order. *Note: Any disagreement over*
3 *whether to include this option or the particular individuals to be named may be resolved by the*
4 *Court only after appropriate meet and confer efforts between the parties.]*

5 4. The term "Counsel of Record" will mean (i) outside counsel who appear in the
6 action in any capacity, whether on the pleadings, on the record in a deposition or in a hearing, or
7 in any other circumstance associated with the action, as counsel for a party, (ii) partners,
8 principals, counsel, associates, employees, and contract attorneys of such outside counsel to
9 whom it is reasonably necessary to disclose the Confidential Information for this action, including
10 supporting personnel employed by the attorneys, such as paralegals, legal secretaries, and legal
11 clerks, and/or (iii) independent shorthand reporters retained to record and transcribe testimony in
12 this case and videographers retained to film testimony in this action.

13 *[Option for designating specific in-house counsel and litigation staff to allow access to and*
14 *review of Confidential Information designated as "CONFIDENTIAL – OUTSIDE COUNSEL*
15 *ONLY" or "CONFIDENTIAL – OUTSIDE COUNSEL ONLY - SOURCE CODE" : For purposes*
16 *of this Order, the term "Counsel of Record" shall also include the following in-house attorneys*
17 *and litigation support staff for [Plaintiff], _____, and the following in-house*
18 *attorneys and litigation support staff for [Defendant], _____, but no other*
19 *in-house personnel unless otherwise provided in this Order. Note: Any disagreement over*
20 *whether to include this option or the particular individuals to be named may be resolved by the*
21 *Court only after appropriate meet and confer efforts between the parties.]*

22 5. The term "Independent Expert" will mean a person with specialized knowledge or
23 experience in a matter pertinent to the case who has been retained by Counsel to serve as an
24 expert witness or as a litigation consultant in this case, and who is not a current employee of a
25 party or of a competitor of a party and who, at the time of retention, is not anticipated to become
26 an employee of, or a non-litigation consultant of a party or competitor of a party.

6. "Source Code" includes human-readable programming language text that defines software or firmware and associated comments, revision histories, formulas, engineering specifications or schematics that define or otherwise describe in detail the algorithms or structure of software designs or hardware designs of integrated circuit devices. Source Code associated with software may be referred to as "Software Source Code," and Source Code associated with hardware may be referred to as "Hardware Source Code"). Text files containing Source Code will hereinafter be referred to as "Source Code Files." Software Source Code Files include, but are not limited to, files containing Source Code in "C," "C++," BREW, Java ME, J2ME, assembler, digital signal processor (DSP) programming languages, and other human readable text programming languages. Software Source Code Files further include "include files," "make" files, "link" files, and other human-readable text files used in the generation and/or building of software directly executed on a microprocessor, micro-controller, or DSP. Hardware Source Code Files include, but are not limited to, files containing Source Code in Hardware Design Language ("HDL"), VHDL, Verilog, or other RTL language.

GENERAL RULES

7. Each party to this litigation that produces or discloses any Confidential Information and/or Materials, or any other information or Materials that the producing party believes should be subject to this Order, may designate the same as “CONFIDENTIAL” or “CONFIDENTIAL – OUTSIDE COUNSEL ONLY.”

(a) Designation as “CONFIDENTIAL”: Any party may use the “CONFIDENTIAL” designation only if, in the good faith belief of such party and its Counsel, the unrestricted disclosure of such information and/or Materials could be potentially prejudicial to the business or operations of such party.

(b) Designation as “CONFIDENTIAL – OUTSIDE COUNSEL ONLY”: Any party may use the “CONFIDENTIAL – OUTSIDE COUNSEL ONLY” designation only if, in the good faith belief of such party and its Counsel, such information and/or Materials is among that considered to be most sensitive by the

1 party, including but not limited to trade secret or other confidential research,
2 development, financial, or other highly sensitive commercial or business
3 information and/or Materials.

4 8. Designation as "CONFIDENTIAL – OUTSIDE COUNSEL ONLY - SOURCE
5 CODE": Any party may use the "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY -
6 SOURCE CODE" designation only if, in the good faith belief of such party and its Counsel, such
7 information and/or Materials contain Source Code or Source Code Files produced by the party,
8 that the party believes in good faith is not generally known to others, and has significant
9 competitive value such that unrestricted disclosure to others would create a substantial risk of
10 serious injury, and that the party would not normally reveal to third parties except in confidence,
11 or has undertaken with others to maintain in confidence.

12 9. In the event the producing party elects to produce Materials for initial inspection,
13 no marking need be made by the producing party in advance of the initial inspection. For
14 purposes of the initial inspection, all Materials produced will be considered as "CONFIDENTIAL
15 – OUTSIDE COUNSEL ONLY," and must be treated as such pursuant to the terms of this Order.
16 Thereafter, upon selection of specified Materials for copying by the inspecting party, the
17 producing party must, within a reasonable time prior to producing those Materials to the
18 inspecting party, mark the copies of those Materials that contain Confidential Information with
19 the appropriate "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE COUNSEL ONLY," or
20 "CONFIDENTIAL – OUTSIDE COUNSEL ONLY - SOURCE CODE" designation.

21 10. Whenever a deposition taken on behalf of any party involves a disclosure of
22 Confidential Information of any party:

23 (a) The deposition or portions of the deposition must be designated as
24 containing Confidential Information subject to the provisions of this Order; such
25 designation must be made on the record whenever possible, but a party may
26 designate portions of depositions as containing Confidential Information after
27 transcription of the proceedings; a party will have until fourteen (14) days after
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1 receipt of the deposition transcript to inform the other party or parties to the action
2 of the portions of the transcript to be designated "CONFIDENTIAL,"
3 "CONFIDENTIAL – OUTSIDE COUNSEL ONLY," or "CONFIDENTIAL –
4 OUTSIDE COUNSEL ONLY - SOURCE CODE."

5 (b) The disclosing party will have the right to exclude from attendance at the
6 deposition, only during such time as "CONFIDENTIAL," "CONFIDENTIAL –
7 OUTSIDE COUNSEL ONLY," or "CONFIDENTIAL – OUTSIDE COUNSEL
8 ONLY - SOURCE CODE" designated Confidential Information is to be disclosed,
9 any person, other than the deponent and other than those individuals permitted
10 access under this Order, the court reporter, and the person(s) agreed upon pursuant
11 to paragraph 14 below; and

12 (c) The originals of the deposition transcripts and all copies of the deposition
13 must bear the legend "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE
14 COUNSEL ONLY," or "CONFIDENTIAL – OUTSIDE COUNSEL ONLY -
15 SOURCE CODE," as appropriate, and the original or any copy ultimately
16 presented to a court for filing must not be filed unless it can be accomplished
17 under seal, identified as being subject to this Order, and protected from being
18 opened except by order of this Court.

19 11. All Confidential Information designated as "CONFIDENTIAL,"
20 "CONFIDENTIAL – OUTSIDE COUNSEL ONLY," or "CONFIDENTIAL – OUTSIDE
21 COUNSEL ONLY - SOURCE CODE" must not be disclosed by the receiving party to anyone
22 other than those persons permitted access within this Order and must be handled in the manner set
23 forth below and, in any event, must not be used for any purpose other than in connection with this
24 litigation, unless and until such designation is removed either by agreement of the parties, or by
25 order of the Court.

26 12. All Confidential Information designated "CONFIDENTIAL - OUTSIDE
27 COUNSEL ONLY" or "CONFIDENTIAL – OUTSIDE COUNSEL ONLY - SOURCE CODE"
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1 may be viewed only by Counsel of Record (as defined in paragraph 4) of the receiving party and
2 by Independent Experts (as defined in paragraph 5). The right of any Independent Expert to
3 receive any Confidential Information will be subject to the advance approval of such expert by
4 the producing party or as approved by the Court. The party seeking approval of an Independent
5 Expert must provide written notice to Counsel for the producing party, which notice will include:
6 (a) the individual's name and business title; (b) business address and country of residence; (c)
7 business or profession; (d) the individual's curriculum vitae; (e) any previous or current
8 relationship (personal or professional) with any of the parties; (f) a list of other cases in which the
9 individual has testified (at trial or deposition) within the last six years; (g) a list of all companies
10 with which the individual has consulted or by which the individual has been employed within the
11 last four years and the time period(s) and brief description and subject matter of each consultancy
12 or employment; and (h) an executed copy of the form attached hereto as Exhibit A, in advance of
13 providing any Confidential Information of the producing party to the Independent Expert. Any
14 objection by the producing party to an Independent Expert receiving Confidential Information
15 must be made in writing within fourteen (14) days following receipt of the identification of the
16 proposed Independent Expert. Confidential Information may be disclosed to an Independent
17 Expert if the fourteen (14) day period has passed and no objection has been made. The approval
18 of Independent Experts must not be unreasonably withheld.

19 13. All Confidential Information designated "CONFIDENTIAL" may be viewed only
20 by Counsel (as defined in paragraph 3) of the receiving party, by Independent Experts, and by the
21 additional individuals listed below, provided each such individual has read this Order in advance
22 of disclosure and has agreed in writing to be bound by its terms:

23 (a) Executives who are required to participate in policy decisions with
24 reference to this action;

25 (b) Technical personnel of the parties with whom Counsel for the parties find
26 it necessary to consult, in the discretion of such Counsel, in preparation for trial of
27 this action; and
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1 (c) Stenographic and clerical employees associated with the individuals
2 identified above.

3 14. In addition to the individuals referenced in Paragraphs 12 and 13 above, all
4 Confidential Information designated "CONFIDENTIAL – OUTSIDE COUNSEL ONLY,"
5 "CONFIDENTIAL – OUTSIDE COUNSEL ONLY - SOURCE CODE," or "CONFIDENTIAL"
6 may also be viewable by independent legal translators retained to translate in connection with this
7 action; independent copying, scanning, technical support and electronic document processing
8 services retained by Counsel in connection with this action; graphics, translation, or design
9 services retained by Counsel for purposes of preparing demonstrative or other exhibits for
10 deposition, trial, or otherwise in connection with this action; non-technical jury or trial consulting
11 services retained by Counsel in connection with this action [*OPTIONAL: and mock jurors*],
12 provided, however, that any such individual has read this Order in advance of disclosure, and has
13 executed a copy of the form attached hereto as Exhibit A in advance of access.

14 15. With respect to all Confidential Information designated "CONFIDENTIAL,"
15 "CONFIDENTIAL – OUTSIDE COUNSEL ONLY," or "CONFIDENTIAL-OUTSIDE
16 COUNSEL ONLY - SOURCE CODE," any person indicated on the face of the document to be
17 its originator, author or a recipient of a copy of the document, may be shown the same.

18 16. All Confidential Information which has been designated as "CONFIDENTIAL,"
19 "CONFIDENTIAL -OUTSIDE COUNSEL ONLY," or "CONFIDENTIAL-OUTSIDE
20 COUNSEL ONLY - SOURCE CODE," by the producing or disclosing party, and any and all
21 reproductions of that information and/or Material, must be retained in the custody of the Counsel
22 of Record for the receiving party, except that Independent Experts authorized to view such
23 information under the terms of this Order may retain custody of copies such as are necessary for
24 their participation in this litigation.

25 17. Before any Materials such as those produced in discovery, answers to
26 interrogatories, responses to requests for admissions, deposition transcripts, or other documents
27 which are designated as "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE COUNSEL
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1 ONLY," or "CONFIDENTIAL – OUTSIDE COUNSEL ONLY - SOURCE CODE," are filed
2 with the Court for any purpose, the party seeking to file such Material must seek permission of
3 the Court to file the Material under seal. Any request to file such Material under seal must
4 comply with Civil Local Rule 79.2.

5 18. At any stage of these proceedings, any party may object to the
6 "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE COUNSEL ONLY," or
7 "CONFIDENTIAL – OUTSIDE COUNSEL ONLY - SOURCE CODE" designation of any
8 Confidential Information. The party objecting to any such designation must notify, in writing,
9 Counsel for the designating party of the objected to designation of such Confidential Information
10 and the grounds for the objection. If the dispute is not resolved consensually between the parties
11 within seven (7) days of receipt of such a notice of objections, the objecting party may move the
12 Court for a ruling on the objection. The Confidential Information at issue must be treated
13 according to the designation of the designating party, until the Court has ruled on the objection or
14 the matter has been otherwise resolved.

15 19. All Confidential Information must be held in confidence by those authorized by
16 this Order to inspect or receive it, and must be used only for purposes of this action. Counsel for
17 each party, and each person receiving Confidential Information must take reasonable precautions
18 to prevent the unauthorized or inadvertent disclosure of such Confidential Information. If
19 Confidential Information is disclosed to any person other than a person authorized by this Order,
20 the party responsible for the unauthorized disclosure must immediately bring all pertinent facts
21 relating to the unauthorized disclosure to the attention of the other parties and, without prejudice
22 to any rights and remedies of the other parties, make every effort to prevent further disclosure by
23 the party and by the person(s) receiving the unauthorized disclosure.

24 20. No party will be responsible to another party for disclosure of Confidential
25 Information under this Order if the Confidential Information in question is not labeled or
26 otherwise designated in accordance with this Order.

1 21. If a party, through inadvertence, produces any Confidential Information without
2 labeling or marking or otherwise designating it as such in accordance with this Order, the
3 designating party may give written notice to the receiving party that the document or thing
4 produced is to be designated, as appropriate, "CONFIDENTIAL," "CONFIDENTIAL -
5 OUTSIDE COUNSEL ONLY," or "CONFIDENTIAL - OUTSIDE COUNSEL ONLY -
6 SOURCE CODE," and that the document or thing produced should be treated as such in
7 accordance with that designation under this Order. The receiving party must treat such
8 designated Confidential Information in accordance with this Order, once the designating party so
9 notifies the receiving party. If the receiving party has disclosed such Confidential Information
10 before receiving the designation, the receiving party must notify the designating party in writing
11 of each such disclosure, and the receiving party will make every effort to prevent further
12 disclosure by the party and by the person(s) receiving such inadvertently produced Confidential
13 Information. Counsel for the parties will agree on a mutually acceptable manner of labeling or
14 marking the inadvertently produced Confidential Information as "CONFIDENTIAL,"
15 "CONFIDENTIAL - OUTSIDE COUNSEL ONLY," or "CONFIDENTIAL - OUTSIDE
16 COUNSEL ONLY - SOURCE CODE".

17 22. Production of "CONFIDENTIAL - OUTSIDE COUNSEL ONLY -
18 SOURCE CODE" Confidential Information:

19 (a) Any Source Code produced in discovery shall be made available for inspection to
20 those authorized under this Order, in a format allowing it to be reasonably reviewed and
21 searched, during normal business hours or at other mutually agreeable times, at a mutually
22 agreed upon location or, absent agreement on location, in commercial escrow facility in
23 this District. The Source Code shall be made available for such inspection on a secured
24 computer in a secured room without Internet access or network access to other computers,
25 and the receiving party shall not copy, remove, or otherwise transfer any portion of the
26 Source Code onto any recordable media or recordable device. The producing party may
27 visually monitor the activities of the receiving party's representatives authorized to inspect
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1 Source Code under this Order during any Source Code review, but only to ensure that
2 there is no unauthorized recording, copying, or transmission of the Source Code.

3 (b) The receiving party authorized under this Order may request paper copies of
4 limited portions of Source Code that are reasonably necessary for the preparation of court
5 filings, pleadings, expert reports, or other papers, or for deposition or trial, but shall not
6 request paper copies for the purpose of reviewing the Source Code other than
7 electronically as set forth in paragraph (a) in the first instance. The producing party shall
8 provide all such Source Code in paper form, including bates numbers and the label
9 "CONFIDENTIAL – OUTSIDE COUNSEL ONLY - SOURCE CODE," and may include
10 other, appropriate watermarks that do not interfere with the legibility of the print. The
11 producing party may challenge the amount of Source Code requested in paper form
12 through appropriate meet and confer efforts between Counsel for the parties and only on
13 motion based on a good faith belief that the amount of paper copies requested is excessive.

14 (c) The party receiving Source Code as authorized under this Order shall maintain a
15 record of any individual who has inspected any portion of the Source Code in electronic or
16 paper form. Such receiving party shall maintain all paper copies of any printed portions
17 of the Source Code in a secured, locked area. Such receiving party shall not create any
18 electronic or other images of the paper copies and shall not convert any of the information
19 contained in the paper copies into any electronic format. Such receiving party shall only
20 make additional paper copies if such additional copies are (1) necessary to prepare court
21 filings, pleadings, or other papers (including a testifying expert's expert report); (2)
22 necessary for deposition; or (3) otherwise necessary for the preparation of its case. Any
23 paper copies used during a deposition shall be retrieved by the producing party at the end
24 of each day and must not be given to or left with a court reporter or any other
25 unauthorized individual.

1 23. [Prosecution Bar: *[Optional]*] Absent written consent from the producing party,
2 any individual who receives access to “CONFIDENTIAL – OUTSIDE COUNSEL ONLY” or
3 “CONFIDENTIAL – OUTSIDE COUNSEL ONLY - SOURCE CODE” information must not be
4 involved in the prosecution of patents or patent applications relating to *[insert subject matter of*
5 *the invention and of highly confidential technical information to be produced]*, including without
6 limitation the patents asserted in this action and any patent or application claiming priority to or
7 otherwise related to the patents asserted in this action, before any foreign or domestic agency,
8 including the United States Patent and Trademark Office (“the Patent Office”). For purposes of
9 this paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or
10 otherwise affecting the scope or maintenance of patent claims. To avoid any doubt,
11 “prosecution” as used in this paragraph includes representing a party challenging a patent before a
12 domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte*
13 reexamination, *inter partes* reexamination, post-grant review and *inter partes* review). This
14 Prosecution Bar will begin when access to “CONFIDENTIAL – OUTSIDE COUNSEL ONLY”
15 or “CONFIDENTIAL – OUTSIDE COUNSEL ONLY - SOURCE CODE” information is first
16 received by the affected individual and will end two (2) years after final termination of this
17 action. *Note: Any disagreement over whether to include this option or the particular limitations*
18 *or provisions of this paragraph may be resolved by the Court only after appropriate meet and*
19 *confer efforts between the parties.]*

20 24. [Development Bar: *[Optional]*] Unless otherwise permitted in writing between the
21 producing party and a receiving party, any Independent Expert retained on behalf of receiving
22 party who is to be given access to the producing party's Confidential Information designated
23 “CONFIDENTIAL – OUTSIDE COUNSEL ONLY” or “CONFIDENTIAL – OUTSIDE
24 COUNSEL ONLY - SOURCE CODE” as authorized under this Order must agree in writing not
25 to perform research development work or product development work directly or indirectly
26 intended for commercial purposes substantially related to such designated Confidential
27 Information. *Note: Any disagreement over whether to include this option or the particular*
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1 *limitations or provisions of this paragraph may be resolved by the Court only after appropriate*
2 *meet and confer efforts between the parties.]*

3 25. Nothing within this Order will prejudice the right of any party to object to the
4 production of any discovery on the grounds that such Confidential Information is protected as
5 privileged or as attorney work product.

6 26. Nothing in this Order will bar Counsel from rendering advice to their clients with
7 respect to this litigation and, in the course thereof, relying upon any Confidential Information
8 designated as "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE COUNSEL ONLY," or
9 "CONFIDENTIAL – OUTSIDE COUNSEL ONLY - SOURCE CODE," provided that the
10 contents of the Confidential Information must not be disclosed to those not authorized by this
11 Order.

12 27. This Order will be without prejudice to the right of any party to oppose production
13 of any Confidential Information for lack of relevance or any other ground other than the mere
14 presence of Confidential Information. The existence of this Order must not be used by either
15 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil
16 Procedure.

17 28. Nothing within this Order will be construed to prevent disclosure of Confidential
18 Information if such disclosure is required by law or by order of the Court.

19 29. Nothing in this Order will be construed to conflict with laws regulating the
20 exportation of certain types of information, Materials, or devices outside of the United States.

21 30. Final Disposition.

22 Unless otherwise agreed by the parties in writing, within sixty (60) days after the Final
23 Disposition of this action, as defined below, each receiving party authorized by this Order must
24 return all Confidential Information to the producing party or destroy such Confidential
25 Information. Whether the Confidential Information is returned or destroyed, Counsel for the
26 receiving party must submit a written certification to Counsel for the producing party (and, if not
27 the same person or entity, to the designating party) by the 60-day deadline that (1) identifies (by
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1 category, where appropriate) all the Confidential Information that was returned or destroyed and
2 (2) affirms that the receiving party has not retained any of the Confidential Information.
3 Notwithstanding this provision, and unless otherwise agreed by the parties in writing, Counsel are
4 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
5 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports,
6 attorney work product, and consultant and expert work product, even if such Materials contain
7 Confidential Information. Any such archival copies that contain or constitute Confidential
8 Information remain subject to this Order as set forth herein. Even after Final Disposition of this
9 litigation, the confidentiality obligations imposed by this Order will remain in effect until a
10 designating party agrees otherwise in writing or a Court otherwise directs. "Final Disposition"
11 means the later of (1) dismissal of all claims and defenses in this action, with or without prejudice
12 and (2) final judgment in this action after the completion and exhaustion of all appeals,
13 rehearings, remands, trials, or reviews of this action, including the time limits for filing any
14 motions or applications for extension of time pursuant to applicable law.

15 31. The restrictions and obligations set forth within this Order will not apply to any
16 Confidential Information that: (a) the parties mutually agree should not be subject to this Order;
17 (b) the parties mutually agree, or the Court rules, is already public knowledge; (c) the parties
18 mutually agree, or the Court rules, has become public knowledge other than as a result of
19 disclosure by the receiving party, its employees, or its agents in violation of this Order; or (d) has
20 come or will come into the receiving party's legitimate knowledge independently of the
21 production by the designating party. Prior knowledge must be established by pre-production
22 documentation.

23 32. The restrictions and obligations within this Order will not be deemed to prohibit
24 discussions of any Confidential Information with anyone if that person already has or obtains
25 legitimate possession of that information.

26 33. Transmission by facsimile is acceptable for all notification purposes within this
27 Order.
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34. This Order may be modified by written agreement of the parties, subject to approval by the Court.

35. The Court may modify the terms and conditions of this Order for good cause, or in the interest of justice, or on its own order at any time in these proceedings. The parties prefer that the Court provide them with notice of the Court's intent to modify the Order and the content of those modifications, prior to entry of such an order.

36. Even after the termination of this action, the confidentiality and other obligations imposed by this Order will remain in effect until the producing party agrees otherwise in writing or the Court otherwise directs. Any Final Disposition of this action as to any or all parties will include a specific provision that the Court will retain jurisdiction to enforce the terms of this Order for a period of two (2) years following such Final Disposition unless otherwise ordered by the Court. The parties, Counsel, and any individual who receives any Confidential Information authorized by this Order consents to the personal jurisdiction of the Court for that purpose.

IT IS SO ORDERED this _____ day of _____, _____.

Judge, United States District Court

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Plaintiff,

Plaintiff,

v.

Defendant,

Defendant.

AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER

I, _____, declare and say that:

1. I am employed as _____
by _____.

2. I have received and read a copy of the Protective Order entered in
_____ v. _____, Case No. _____, and understand and agree to
abide by its terms.

3. I agree to keep confidential all Confidential Information provided to me in this
matter, in accordance with the restrictions in the Protective Order.

4. I acknowledge that, by signing this agreement, I am subjecting myself to the
jurisdiction of the United States District Court for the Southern District of California with respect
to enforcement of the Protective Order.

1 5. I understand that any disclosure or use of Confidential Information in any manner
2 contrary to the provisions of the Protective Order may subject me to sanctions for contempt of
3 court.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Dated: _____.

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10 SDI-137556v1

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 Plaintiff,

12 Plaintiff,

13 v.

14 Defendant,

15 Defendant.
16
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Case No. 00cv000

MODEL ORDER GOVERNING
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION IN PATENT
CASES

18 The Court ORDERS as follows:

19 1. This Order supplements all other discovery rules and orders. It streamlines
20 Electronically Stored Information ("ESI") production to promote a "just, speedy, and inexpensive
21 determination" of this action, as required by Federal Rule of Civil Procedure 1.

22 2. This Order may be modified for good cause. If the parties cannot resolve their
23 disagreements regarding modifications, the parties may submit their competing proposals and a
24 summary of their dispute. Proposed modifications or disputes regarding ESI that counsel for the
25 parties are unable to resolve will be presented to the Court at the initial case management
26 conference, Fed. R. Civ. P. Rule 16(b) Scheduling Conference, or as soon as possible thereafter.
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1 3. Costs will be shifted for disproportionate ESI production requests pursuant to
2 Federal Rule of Civil Procedure 26. Likewise, a party's nonresponsive or dilatory discovery
3 tactics will be cost-shifting considerations.

4 4. A party's meaningful compliance with this Order and efforts to promote efficiency
5 and reduce costs will be considered in cost-shifting determinations.

6 5. General ESI production requests under Federal Rules of Civil Procedure 34 and 45
7 must not include metadata absent a showing of good cause. However, fields showing the date
8 and time that the document was sent and received, as well as the complete distribution list, must
9 generally be included in the production.

10 6. Each requesting party will limit its ESI production requests to a total of ten
11 custodians per producing party for all such requests, excluding requests for email which are
12 addressed in paragraph 4 below. A custodian may be identified by job description or function so
13 long as it identifies a single person. The parties may jointly agree to modify this limit without the
14 Court's leave. The Court will consider contested requests for additional custodians per producing
15 party, or requests for searches of servers, databases or other systems not maintained by a single
16 person, upon showing of good cause and distinct need based on the size, complexity, and issues
17 of this specific case. Should a party serve ESI production requests for additional custodians
18 beyond the limits agreed to by the parties or granted by the Court pursuant to this paragraph, the
19 requesting party may bear all reasonable costs caused by such additional discovery. While there
20 is no *per se* limit on quantity of search terms for the identified custodians for non-email ESI, a
21 party may not request more than twenty search terms absent consent or Order of the Court
22 granted for good cause shown. Parties must meet and confer to limit ESI custodians and search
23 terms prior to approaching the Court for assistance on any ESI matters. Each party must use a
24 common set of search terms for all custodians of another party from whom it seeks ESI.

25 7. General ESI production requests under Federal Rules of Civil Procedure 34 and 45
26 must not include email or other forms of electronic correspondence (collectively "email"). To
27 obtain email parties must propound specific email production requests.

28

1 8. Email production requests will only be propounded for specific issues, rather than
2 general discovery of a product or business.

3 9. Email production requests must be phased to occur after the parties have
4 exchanged initial disclosures and basic documentation about the patents, the prior art, the accused
5 instrumentalities, and the relevant finances. While this provision does not require the production
6 of such information, the Court encourages prompt and early production of this information to
7 promote efficient and economical streamlining of the case.

8 10. Email production requests will identify the custodian, search terms, and time
9 frame. The parties will cooperate to identify the proper custodians, proper search terms and
10 proper time frames.

11 11. Each requesting party must limit its email production requests to a total of five
12 custodians per producing party for all such requests. The parties may jointly agree to modify this
13 limit without the Court's leave. The Court will consider contested requests for additional
14 custodians per producing party, upon showing of good cause and distinct need based on the size,
15 complexity, and issues of this specific case. Should a party serve email production requests for
16 additional custodians beyond the limits agreed to by the parties or granted by the Court pursuant
17 to this paragraph, the requesting party may bear all reasonable costs caused by such additional
18 discovery.

19 12. Each requesting party will limit its email production requests to a total of five
20 search terms per custodian per party. The parties may jointly agree to modify this limit without
21 the Court's leave. The Court will consider contested requests for additional search terms per
22 custodian, upon showing a distinct need based on the size, complexity, and issues of this specific
23 case. The search terms must be narrowly tailored to particular issues. Indiscriminate terms, such
24 as the producing company's name or its product name, are inappropriate unless combined with
25 narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive
26 combination of multiple words or phrases (e.g., "computer" and "system") narrows the search and
27 will count as a single search term. A disjunctive combination of multiple words or phrases (e.g.,
28 "computer" or "system") broadens the search, and thus each word or phrase will count as a

1 separate search term unless they are variants of the same word. Use of narrowing search criteria
2 (e.g., "and," "but not," "w/x") is encouraged to limit the production and must be considered when
3 determining whether to shift costs for disproportionate discovery. Should a party serve email
4 production requests with search terms beyond the limits agreed to by the parties or granted by the
5 Court pursuant to this paragraph, the requesting party may bear all reasonable costs caused by
6 such additional discovery.

7 13. The receiving party must not use ESI that the producing party asserts is attorney-
8 client privileged or work product protected to challenge the privilege or protection.

9 14. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a
10 privileged or work product protected ESI is not a waiver in the pending case or in any other
11 federal or state proceeding.

12 15. The mere production of ESI in a litigation as part of a mass production will not
13 itself constitute a waiver for any purpose. .

14 IT IS SO ORDERED this _____ day of _____, ____.

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16 _____
17 United States Magistrate Judge
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20 SDI-137568v1
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